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 7 JOSEPH ABDULLAH

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PJH

### UNITED STATES DISTRICT COURT

### NORTHERN DISTRICT OF CALIFORNIA

IC 06 4782

12 JOSEPH ABDULLAH,

Case No.:

13 Plaintiff

### COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

16 SHIV, INC. dba JACK IN THE BOX;  
 17 PETER A. ZARCADES as Trustee of  
 THE TRUST INDENTURE OF PETER  
 18 A. ZARCADES; THE TRUST  
 INDENTURE OF PETER A.  
 19 ZARCADES and Does 1 through 10,  
 20 inclusive.

1. Americans with Disabilities Act  
[42 U.S.C. § 12101 *et seq.*]
2. California Civil Code § 52.1 *et seq.*
3. California Civil Code § 54, *et seq.*
4. Negligence
5. California Health and Safety Code  
§ 19955, *et seq.*

21 Defendants.

COPY

## **COMPLAINT**

COMES NOW the Plaintiff, JOSEPH ABDULLAH, and complains through his attorneys of record as follows:

## I. NATURE OF THE CASE

5       1. This is an action seeking injunctive and declaratory relief and  
6 statutory damages to remedy unlawful discrimination by the Defendants against  
7 the Plaintiff in the Defendants' place of public accommodation in violation of the  
8 Americans with Disabilities Act, 42 U.S.C. § 12101, et seq., the Unruh Civil  
9 Rights Act, California Civil Code § 51 *et seq.*, the Disabled Person's Act,  
10 California Civil Code § 54, *et seq.*, and California Health and Safety Code §  
11 19955.

## II. PARTIES

13       2. Plaintiff, JOSEPH ABDULLAH is a citizen of the State of California,  
14 and is a "disabled" person within the meaning of the Americans with Disabilities  
15 Act and California Government Code § 12926. Within the past two years, Plaintiff  
16 has visited, or attempted to visit, the Defendants' business establishment at issue in  
17 this complaint and has been discriminated against and prevented from enjoying fair  
18 and equal access to such Defendants' business establishment due to his disabled  
19 status in ways that will be described in more detail herein. Plaintiff intends to  
20 return to the subject premises herein in the immediate future for the provision of  
21 goods and services therein and is being prevented from so returning due to the  
22 existence of numerous architectural barriers, as will be described in more detail  
23 herein.

24       3.     Defendant, SHIV, INC. dba JACK IN THE BOX, owns, operates,  
25 and/or leases a fast food restaurant located at 201 South Spruce Avenue, South San  
26 Francisco, California.

27 | //

1       4. Defendant, PETER A. ZARCADES as Trustee of THE TRUST  
2 INDENTURE OF PETER A. ZARCADES, owns, operates, and/or leases a fast  
3 food restaurant located at 201 South Spruce Avenue, South San Francisco,  
4 California.

5       5. Defendant, THE TRUST INDENTURE OF PETER A. ZARCADES,  
6 owns, operates, and/or leases a fast food restaurant located at 201 South Spruce  
7 Avenue, South San Francisco, California.

8       6. Defendant Does 1 through 10, inclusive, are sued herein under  
9 fictitious names. Their true names and capacities are unknown to the Plaintiff.  
10 When their true names and capacities are ascertained, Plaintiff will amend this  
11 complaint by inserting their true names and capacities herein. Plaintiff is informed  
12 and believes and thereon alleges that each of the fictitiously named Defendants is  
13 responsible in some manner for the occurrences herein alleged, and that Plaintiff's  
14 damages as herein alleged were proximately caused by those Defendants.

### 15                   **III. JURISDICTION AND VENUE**

16       7. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331 and §  
17 1343 in that this is an action arising under the laws of the United States and each of  
18 the Defendants are subject to personal jurisdiction.

19       8. Under the doctrine of pendant and supplemental jurisdiction, this  
20 Court has jurisdiction over Plaintiff's claims arising under California state law.  
21 Venue is appropriate in this Court under 28 U.S.C. § 1339(b); the claim having  
22 arisen in Northern District of California.

### 23                   **IV. PRELIMINARY STATEMENT**

24       9. In 1990, the United States Congress made findings regarding persons  
25 with physical disabilities, finding that laws were necessary to protect more than 43  
26 million Americans with one or more physical or mental disabilities; [that] such  
27 forms of discrimination against individuals with disabilities continue to be a  
28 serious and pervasive social problem; [that] the nation's proper goals regarding

1 individuals with disabilities are to assure equality of opportunity, full participation,  
2 independent living and economic self-sufficiency for such individuals; [and that]  
3 the continuing existence of unfair and unnecessary discrimination and prejudice  
4 denies people with disabilities the opportunity to compete on an equal basis and the  
5 pursue those opportunities for which our free society is justifiably famous. 42  
6 U.S.C. § 12101, *et seq.*

7       10. Congress states its purpose in enacting the Americans with  
8 Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.* as follows:  
9 "It is the purpose of this act (1) to provide a clear and comprehensive national  
10 mandate for the elimination of discrimination against individuals with disabilities;  
11 (2) to provide clear, strong, consistent, enforceable standards addressing  
12 discrimination against individuals with disabilities; (3) to ensure that the Federal  
13 government plays a central role in enforcing the standards established in this act on  
14 behalf of individuals with disabilities; and (4) to invoke the sweep of  
15 Congressional authority, including the power to enforce the 14<sup>th</sup> Amendment and  
16 to regulate commerce, in order to address the major areas of discrimination faced  
17 day to day by people with disabilities."

18       11. Title III of the Americans with Disabilities Act prohibits  
19 discrimination against individuals "on the basis of disability in the full and equal  
20 enjoyment of the goods, services, facilities, privileges, advantages, or  
21 accommodations of any place of public accommodation by any person who owns,  
22 leases (or leases to), or operates a place of public accommodation." 42 U.S.C. §  
23 12182(a).

24       12. The "Americans with Disabilities Act Architectural Guidelines for  
25 Building and Facilities" (ADAAG) has been adopted as the governing authority  
26 setting forth minimum standards and requirements designed to guarantee basic  
27 access to public accommodations by persons with physical and mental disabilities  
28

1 and to prevent unnecessary unlawful discrimination against such individuals. 28  
2 C.F.R. 36.501(a).

3       13. The general rule under Title III of the ADA as it relates to public  
4 accommodations is set forth in § 302(b)(2)(A)(iv), codified as 42 U.S.C. § 12182.  
5 The critical portions of text are quoted hereafter: “(2) Specific Prohibitions . . . (A)  
6 Discrimination . . . (iv) a failure to remove architectural barriers, and  
7 communication barriers that are structural in nature, in existing facilities . . . where  
8 such removal is readily achievable.”

9        14. All of the Defendants listed herein lease, lease to, operate, and/or own  
10 "places of public accommodation" as defined by the Americans with Disabilities  
11 Act, and are therefore covered by Title III of the Act.

12        15. Defendant's operation of their businesses all effect interstate  
13 commerce.

## V. STATEMENT OF FACTS

15        16. Defendants, and each of them, have failed and continue to fail to  
16 provide sufficient barrier free access to the aforementioned business establishment  
17 including, but not limited to, inaccessible paths of travel, inaccessible parking,  
18 noncompliant signage and/or otherwise failing to comply with specific  
19 accessibility requirements as set forth in the ADA Accessibility Guidelines and/or  
20 California's Title 24 Building Code requirements, and/or other applicable codes,  
21 statutes and/or regulations. Plaintiff provided Defendants with informal notice of  
22 the violations as set forth in this Complaint. However, to date Plaintiff has not  
23 received any form of response from Defendants.

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## **VI. FIRST CAUSE OF ACTION**

## **For Violations of the Americans with Disabilities Act**

42 U.S.C. § 12101 *et seq.*

**(By Plaintiff Against All Defendants)**

17. Plaintiff hereby reasserts and incorporates by reference the allegations of paragraphs 1 through 16 of this Complaint, as if fully set forth in detail herein.

7       18. The aforementioned conduct by Defendants constitutes ongoing acts  
8 of unfair and unlawful discrimination against Plaintiff in violation of 42 U.S.C. §  
9 12101, *et seq.* Unless restrained from doing so, Defendants will continue to violate  
10 the ADA. Such conduct, unless enjoined by action of this Court, will continue to  
11 inflict injuries on Plaintiff for which Plaintiff will have no other adequate remedy  
12 at law.

13       19. Plaintiff alleges that constructing compliant facilities and/or  
14 modifying existing facilities to guarantee compliance can be done simply and  
15 inexpensively and will eliminate the disparate and discriminatory treatment of  
16 persons with disabilities by ensuring proper barrier-free access for safe, full and  
17 equal use and enjoyment of the Defendants' business establishment. Correction of  
18 the items complained of in this Complaint is, therefore, readily achievable and is  
19 required of the Defendants by the provisions of the ADA. 42 U.S.C. §  
20 12182(b)(2)(A)(iv).

21       20. Defendants' failure to fully comply with ADA statutes, regulations  
22 and the "Americans with Disabilities Act Architectural Guidelines for Buildings  
23 and Facilities" (ADAAG) and to make all readily achievable accommodations to  
24 remove architectural barriers to allow access by Plaintiff to the public facility,  
25 goods and services provided by the Defendants violates the Americans with  
26 Disabilities Act.

27       21. Pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12188 *et*  
28 *seq.*, Plaintiff is being subjected to discrimination on the basis of disability in

1 violation of this Title and/or has reasonable grounds for believing he is about to be  
2 subjected to discrimination in violation of the ADA. Plaintiff cannot return to or  
3 make use of the facility complained of herein for the purpose of entry of provision  
4 of goods and services, and so long as the Defendants continue to maintain their  
5 facility in such a way as to refuse to allow equal access to persons with disabilities  
6 such as Plaintiff, such a pattern of discriminatory treatment will continue.

7 **VII. SECOND CAUSE OF ACTION**

8 **For violation of the Unruh Civil Rights Act**

9 **California Civil Code § 51, *et seq.***

10 **(By Plaintiff Against All Defendants)**

11 22. Plaintiff hereby reasserts and incorporates by reference the allegations  
12 of paragraphs 1 through 21 of this Complaint, as if fully set forth in detail herein.

13 23. Plaintiff is a "disabled" person within the meaning of Section 12926  
14 of the California Government Code.

15 24. Due to the various acts of intentional discrimination set forth in this  
16 Complaint, Plaintiff has been denied his right and entitlement to "full and equal  
17 accommodations, advantages, facilities, privileges, or services in all business  
18 establishments of every kind whatsoever" as required by Civil Code § 51 *et seq.*

19 25. The aforementioned violations of the standards set forth in the  
20 Americans with Disabilities Act of 1990, and the accompanying ADAAG, also  
21 constitute violations of the Unruh Civil Rights Act, pursuant to Civil Code § 51 *et*  
22 *seq.*

23 26. Defendants' wrongful conduct is continuing in that Defendants  
24 continue to deny full, fair, and equal access to their business establishment and  
25 full, fair and equal accommodations, advantages, facilities, privileges, and services  
26 to Plaintiff as a disabled person due to his disability, which wrongful conduct has  
27 resulted in damage to the Plaintiff.

28

1       27. Unless Defendants are restrained by a preliminary and permanent  
2 injunction of this Court, Plaintiff's injury will be immediate and irreparable.  
3 Plaintiff has no other plain, speedy, and adequate remedy at law, and it will be  
4 impossible to determine the precise amount of damage that he will suffer if  
5 Defendants' conduct is not restrained.

### VIII. THIRD CAUSE OF ACTION

**For Violations of California Civil Code § 54, *et seq.***

**(By Plaintiff Against All Defendants)**

9       28. Plaintiff hereby reasserts and incorporates by reference the allegations  
10 of paragraphs 1 through 27 of this Complaint, as if fully set forth in detail herein.

11        29. Plaintiff is a "disabled" person within the meaning of Section 12926 of  
12 the California Government Code.

13       30. Due to the various acts of discrimination set forth in this Complaint,  
14 Plaintiff has been denied his right and entitlement to “full and free use of the  
15 streets, highways, sidewalks, walkways, public buildings, medical facilities,  
16 including hospitals, clinics, and physicians’ offices, public facilities, and other  
17 public places” as required by Civil Code § 54(a).

18       31. The aforementioned violations of the standards set forth in the  
19 Americans with Disabilities Act of 1990, and the accompanying ADAAG,  
20 constitute violations of Civil Code § 54 *et seq.*, including Sections 54(c) and  
21 54.1(a)(3). -

32. Defendants' wrongful conduct is continuing in that Defendants  
33 continue to deny full, fair, and equal access to their business establishment and  
34 full, fair and equal accommodations, advantages, facilities, privileges, and services  
35 to Plaintiff as a disabled person due to his disability, which wrongful conduct has  
36 resulted in damage to the Plaintiff.

33. Unless Defendants are restrained by a preliminary and permanent injunction of this Court, Plaintiff's injury will be immediate and irreparable.

1 Plaintiff has no other plain, speedy, and adequate remedy at law, and it will be  
2 impossible to determine the precise amount of damage that he will suffer if  
3 Defendants' conduct is not restrained.

4 **IX. FOURTH CAUSE OF ACTION**

5 **Negligence**

6 **(By Plaintiff Against All Defendants)**

7 34. Plaintiff hereby reasserts and incorporates by reference the allegations  
8 of paragraphs 1 through 33 of this Complaint, as if fully set forth in detail herein.

9 35. Defendants owed Plaintiff a mandatory statutory duty to make their  
10 facility accessible pursuant to, among other statutes and guidelines, Title 24 of the  
11 California Administrative Code and applicable Uniform Building Codes, as  
12 amended. Plaintiff believes and thereon alleges that Defendants have failed to  
13 make their facility accessible before and after remodeling and/or renovations, as  
14 required by the ADA, California Government Code § 4450 and California Health  
15 and Safety Code § 19955.

16 36. Defendants owed Plaintiff a mandatory statutory duty to provide full  
17 and equal access to accommodations, advantages, facilities, privileges and services  
18 of all business establishment and places of public accommodation. Plaintiff  
19 believes and thereon alleges that Defendants have breached their duty by denying  
20 full and equal access to said accommodations, advantages, facilities, privileges and  
21 services, in violation of California Civil Code §§ 51, *et seq.*, 52, *et seq.*, 54, 54.1,  
22 54.2, 54.3, 55, and 55.1 and any other Civil Code Sections which provided relief  
23 for the discrimination suffered by Plaintiff.

24 37. As a proximate result of the negligent action or inaction of  
25 Defendants, and each of them, Plaintiff suffered general, special and statutory  
26 damages which will be presented at the time of trial according to proof.  
27 //  
28

1       38. Defendants' negligent conduct as described herein was fraudulent,  
2 malicious and oppressive and done in conscious or reckless disregard for Plaintiff's  
3 rights. Therefore, the actions or inactions of Defendants, and each of them, justify  
4 an award of punitive or exemplary damages in an amount not presently  
5 ascertainable, but which will be determined according to proof at trial or before.  
6 Plaintiff will amend this Complaint, with leave of Court if necessary, to insert the  
7 true amount hereof when same has been ascertained, or at the time of trial.

## X. FIFTH CAUSE OF ACTION

For Violations of California Health and Safety Code § 19955, *et seq.*

(By Plaintiff Against All Defendants)

11       39. Plaintiff hereby reasserts and incorporates by reference the allegations  
12 of paragraphs 1 through 38 of this Complaint, as if fully set forth in detail herein.

13       40. Defendants' facility, or portions thereof, are or contain places of  
14 public accommodation within the meaning of Health and Safety Code § 19955, *et*  
15 *seq.* The aforementioned acts and omissions of Defendants constitute a denial of  
16 equal access to the use and enjoyment of Defendants' facility by Plaintiff due to  
17 his disability.

18       41. Defendants' failure to fulfill their duties and obligations to provide  
19 full and equal access to their facility by persons with disabilities has caused  
20 Plaintiff to suffer a deprivation of Plaintiff's civil rights.

## XI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests of this Honorable Court:

23 | 1. That this Court assume jurisdiction.

24 | 2. That this Court issue an injunction, as mandated by 42 U.S.C.

§ 12188(a)(2), and 28 C.F.R. § 36.501(b), enjoining Defendant, and each of them, from continuing their unlawful discrimination against persons with disabilities.

27       3. That this Court issue mandatory relief, thereby ordering the  
28 Defendants, and each of them, to alter the premises to make such facility readily

1 accessible to and useable by individuals with disabilities to the extent required by  
2 the Americans with Disabilities Act and Subpart E of 28 C.F.R. Part 36.

3       4. That this Court award Plaintiff appropriate attorneys' fees and costs of  
4 this suit as provided by 42 U.S.C. § 12205, 28 C.F.R. § 36.505, California Code of  
5 Civil Procedure § 1021.5 and California Civil Code § 55.

6       5. For statutory Damages in an amount not less than \$1,000 and  
7 \$4,000.00 per violation in accordance with California Civil Code §§ 54.3(a) and  
8 52(a).

9       6. For general, special, punitive and exemplary damages according to  
10 proof.

11      7. That this Court award Plaintiff such other additional and proper relief  
12 as may be just and equitable.

13

14 Respectfully Submitted,

15 DATED: 8/2/06

AZIMY & NATHAN, LLP

16  
17 By:

18 Reuben D. Nathan, Esq.  
19 Attorneys for Plaintiff,  
20 JOSEPH ABDULLAH

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